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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,509	08/01/2001	Kazuhiko Hayashi	Q65676	3298

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SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037

EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/918,509

Applicant(s)

HAYASHI, KAZUHIKO

Examiner

Jeffrey R. Swearingen

Art Unit

2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): rejection of claims 11 and 12 under 35 U.S.C. 101.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


JASON CARDONE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive.

Applicant's arguments concerning claims 11 and 12 have overcome the rejection under 35 U.S.C. 101. However, it is noted that claims 11 and 12 are in improper Markush format. See MPEP 2173.05(h).

Applicant again argued Ueda failed to disclose renewal of information. Ueda "continually reproduced" information, or continually renewed information. Applicant argued that a buffer was not present in the application on page 4 of the remarks, and then admitted the presence of a buffer on page 5 of the remarks. The MPEP dictates that claims be given a broad reading during examination and that limitations can be read in light of the specification, but that limitations from the specification cannot be read into the claims. Claims 1 and 17 fail to mention any menu system, and the claims have been read as pre-buffering video during playback. Regardless, Ueda still taught a menu system in column 2.

Applicant argued Ueda failed to teach or suggest at least a portion of the plurality of partial information is stored in the means for storing prior to use of the information delivery system by a user and at least a portion of the plurality of partial information is stored in the information storage and playback device prior to use of the information delivery system by a user. Use of the partial information is playback of the information in the broad reading of the claims, not downloading menu items.

Applicant made a broad allegation that the combination of Ueda and Swix failed to teach "the specific times of cost tracking variously recited in independent claims 29-33." The combination of Ueda and Swix taught pay-per-view accounting for video services, including what Applicant claimed in claims 29-33.

Applicant argued again Ueda failed to teach or suggest "the partial information of the delivery information, which is transmitted from the information delivery device to the information storage and playback device through the information communicating means and is received and stored in the information storage and playback device, is renewed when necessary", repeating the arguments concerning claims 1 and 17, which have already been discussed.

Applicant argued Ueda and Barton failed to disclose storing information in two mediums. Barton disclosed in column 3 the use of a hard drive and other storage media, therefore teaching storage of a file on two different media. It is further noted that file fragmentation and storage of file parts on various separate media was well known in the art to prevent failure of a single storage medium and allow for data recovery. An example for Applicant's benefit is RAID storage, which separated data over multiple hard drives in sections.

Applicant repeated the arguments of claim 23 "for at least the reasons discussed above with respect to independent claim 28". Independent claim 28 was cancelled by Applicant in this action, and no arguments were presented by Applicant regarding claim 28. However, Applicant is pointed to the response above to the rebuttal to Applicant's broad allegation against claims 29-33.

Applicant made no further arguments.